

HOW ARE CBD PRODUCTS REGULATED UNDER CANADIAN CANNABIS LAW?

Posted on March 13, 2019

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In the wake of Canada's initial legalization of cannabis for adult recreational use, a number of impactful global regulatory changes and discussions have followed. A paradigm shift has begun as other countries have started to loosen their existing cannabis regulations, or at least to consider such actions. Unsurprisingly, both the public and private markets continue to flood with budding cannabis companies (where legally allowed) hoping to carve out a niche for themselves. To gain an edge, many of these companies have focused their efforts on producing, processing and selling CBD (Cannabidiol)—a chemical compound derived from cannabis that has blurred certain regulatory lines.

As with many rapidly evolving industries, there is often a gap between a business' legal knowledge and the reality of the regulatory environment in which it operates. This article seeks to shed light on Canada's current regulatory regime governing the production, processing, and sale of CBD and CBD products.

CBD Versus THC – Why the Regulatory Confusion?

'Cannabis' is the general designation of the plants *Cannabis sativa*, *Cannabis indica* and *Cannabis ruderalis*.^[1] THC (Delta-9-tetrahydrocannabinol) and CBD are two well known cannabinoids (i.e. chemical constituents of cannabis) although new cannabinoids are discovered frequently. While THC has certain psychoactive properties—CBD is considered 'non-psychoactive' and understood to have potential therapeutic benefits.^[2]

Both THC and CBD are naturally found in all cannabis plants but their concentrations may vary greatly depending on the specific plant in question. For example, *Cannabis sativa* is typically thought to have a high ratio of THC to CBD, even though hemp^[3], a variety of *Cannabis sativa*, typically has a low THC to CBD ratio. Due to its non-psychoactive nature and the fact that CBD is omitted altogether from Canada's definition of industrial hemp^[4], it is perhaps unsurprising that some businesses (inappropriately) distinguish CBD and THC from a regulatory perspective^[5], or believe (equally inappropriately) that CBD is regulated differently depending on its source.

How Is CBD Regulated in Canada?

In Canada, CBD is regulated in the same manner as THC under the Cannabis Act^[6] and the Cannabis Regulations^[7]. CBD is not regulated under the Industrial Hemp Regulations, regardless of its source (being industrial hemp or otherwise). As of today's date, a business requires a license under the Cannabis Act and the Cannabis Regulations (not under the Industrial Hemp Regulations) if it wishes to produce, process, and/or sell any permitted CBD products, including dried cannabis and fresh cannabis, CBD oil, cannabis plants, and cannabis seeds. Edibles, beverages, extracts, concentrates and topicals containing CBD are currently prohibited but are expected to be permitted on or around October 17, 2019 based on available guidance from Health Canada.^[8]

What Is in Store for the Future?

Despite becoming the second country in the world to establish a legal national marketplace, some argue that Canada's stance on CBD regulation is too conservative. Unlike in Canada, the United States federal government regulates CBD derived from hemp differently from CBD derived from other sources—an interesting reversal considering the U.S. federal government continues to categorize cannabis as an illicit narcotic.^[9] Further, the Expert Committee on Drug Dependence (ECDD) of the World Health Organization (WHO)—an organization that has historically categorized cannabis as a dangerous drug—published a letter on January 24, 2019 recommending to the United Nations Commission on Narcotic Drugs (CND) that cannabis should generally be re-classified within international law.^[10] The ECDD also recommended that “preparations containing pure CBD should not be scheduled under the international drug conventions” because CBD has not demonstrated potential for abuse or to produce dependence.^[11]

A number of the CND's member states have requested more time to evaluate the ECDD's recommendations; therefore, the CND postponed its vote originally scheduled for March 7, 2019. Despite uncertainty from the CND, the WHO's position regarding the safety of CBD and the U.S. federal government's relaxation of its views towards hemp-derived CBD may influence Canada's position towards its own CBD regulations.

The Canadian regulatory landscape governing the cannabis industry is complex and continuously evolving. Prior to getting involved in the legal cannabis industry in Canada, whether as an investor or entrepreneur, producer or retailer, or otherwise, it is important to understand the regulatory restrictions of the current regime. Please contact us if you have any questions or comments with respect to any of the above information.

by Michael E. Reid, Gavyn B. Backus and Alexander Tyzuk, Articled Student

[1] World Health Organization, Department of Mental Health and Substance Abuse, [The health and social effects of nonmedical cannabis use](#), (2016) at 2.[ps2id id='1' target='']

[2] *Ibid* (“Cannabinoids are sometimes used therapeutically (e.g. for management of spasticity in multiple

sclerosis or nausea in the process of cancer chemotherapy)").[ps2id id='2' target=""]

[3] Hemp is a variety of *Cannabis sativa* that it is often differentiated based on its chemical profile. For the purposes of this discussion, the terms 'hemp' and 'industrial hemp' are used interchangeably (see note 4 for definition of industrial hemp).[ps2id id='3' target=""]

[4] SOR/2018-145. (the "**Industrial Hemp Regulations**") under the *Cannabis Act*, SC 2018, c 16 (the "**Cannabis Act**") define "Industrial hemp" as "a cannabis plant – or any part of the plant – in which the concentration of THC is 0.3% or less in the flowering heads and leaves".[ps2id id='4' target=""]

[5] Emma Paling, "[Kyla Ford Promotes Black Market Cannabis Oils on Instagram](#)" (23 January 2019), MSN Money; Mike Hager, "[CBD: the treaty cannabis compound that's blurring the law for Canadians](#)" (19 January 2019), The Globe and Mail.[ps2id id='5' target=""]

[6] *Supra* note 4.[ps2id id='6' target=""]

[7] SOR/2018-144.[ps2id id='7' target=""]

[8] Government of Canada: Department of Justice. "[Cannabis Legalization and Regulation](#)" (last modified 17 October 2018), Government of Canada.[ps2id id='8' target=""]

[9] Despite cannabis being federally illegal, certain states authorize medical and/or recreational cannabis production and distribution by licensed or registered entities under applicable state law. On December 20, 2018, President Donald Trump signed the *Agricultural Improvement Act of 2018* (commonly known as the "**2018 Farm Bill**") into law, removing "industrial hemp" (as defined in the 2018 Farm Bill) and the cannabinoids extracted from industrial hemp, such as CBD, from the U.S. *Controlled Drug and Substance Act*; see United States Food & Drug Administration, News Release, "[Statement from FDA Commissioner Scott Gottlieb, M.D., on signing of the Agriculture Improvement Act and the agency's regulation of products containing cannabis and cannabis-derived compounds](#)" (20 December 2018); see Lisa Gill, "[Farm Bill Sets the Stage for Legal CBD Across the Country](#)" (21 December 2018), CR Consumer Reports.[ps2id id='9' target=""]

[10] [Letter from Doctor Tedros Adhanom Ghebreyesus to Antonio Guterres, Secretary-General of the United Nations](#) (24 January 2019).[ps2id id='10' target=""]

[11] [Note by the Secretariat on the scope of control of substances: proposed scheduling recommendations by the World Health Organization on cannabis and cannabis-related activities](#), ECOSOC/CND, 62nd Sess, Annex, Provisional Agenda Item 9(a), UN Doc E/CN.7/2019/12 at 10, (the WHO recommended "adding a footnote to the entry for cannabis and cannabis resin in Schedule I of the 1961 Convention to read 'Preparations containing predominantly cannabidiol [CBD] and not more than 0.2 per cent of delta-9-tetrahydrocannabinol [THC] are not under international control'").[ps2id id='11' target=""]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against



making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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